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SENATE BILL 975

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

L. SKIP VERNON

AN ACT

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE TAX
ADMINISTRATION ACT TO PROVIDE FOR VARIABLE INTEREST RATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-1-67 NMSA 1978 (being Laws 1965,
Chapter 248, Section 68, as amended) is amended to read:

"7-1-67. INTEREST ON DEFICIENCIES. --

A. If any tax imposed is not paid on or before the
day on which it becomes due, interest shall be paid to the state
on such amount from the first day following the day on which the
tax becomes due, without regard to any extension of time or
installment agreement, until it is paid, except that:

(1) for any income tax imposed on a member of
the armed services of the United States serving in a combat zone
under orders of the president of the United States, interest

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1 shall accrue only for the period beginning the day after any
2 applicable extended due date if the tax is not paid;

3 (2) if the amount of interest due at the time
4 payment is made is less than one dollar (\$1.00), then no
5 interest shall be due; and

6 (3) if demand is made for payment of any tax,
7 including accrued interest, and if such tax is paid within ten
8 days after the date of such demand, no interest on the amount so
9 paid shall be imposed for the period after the date of the
10 demand.

11 B. Interest due to the state under Subsection A or
12 [D] E of this section shall be:

13 (1) for periods prior to January 1, 1998, at the
14 rate of fifteen percent a year, computed at the rate of one and
15 one-fourth percent per month or any fraction thereof; [provided
16 that if a different rate is specified by a compact or other
17 interstate agreement to which New Mexico is a party, [then] that
18 rate shall be applied to amounts due under the compact or other
19 agreement] and

20 (2) for calendar years beginning on or after
21 January 1, 1998, at a rate equal to the underpayment rate
22 determined by the internal revenue service in accordance with
23 Section 6621 of the Internal Revenue Code for the calendar
24 quarter immediately preceding the calendar year to which the
25 rate is to apply. However, if no underpayment rate is

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1 determined for that period, the rate for the calendar year shall
2 be the prime rate on the first business day of that calendar
3 year plus one hundred basis points, computed at one-twelfth of
4 that rate per month. If a monthly period for which interest is
5 being calculated lies in two calendar years, the interest rate
6 applicable to the earlier calendar year shall apply to the whole
7 monthly period. As used in this paragraph, "prime rate" means
8 the nationally published prime rate representing the base rate
9 on corporate loans posted by at least seventy-five percent of
10 the nation's thirty largest banks.

11 C. Notwithstanding the provisions in Subsection B of
12 this section, if a different rate of interest is specified by a
13 compact or other interstate agreement to which New Mexico is a
14 party, that rate shall be applied to amounts due under the
15 compact or other agreement.

16 [~~C.~~] D. Nothing in this section shall be construed
17 to impose interest on interest or interest on the amount of any
18 penalty.

19 [D.] E. If any tax required to be paid in accordance
20 with Section 7-1-13.1 NMSA 1978 is not paid in the manner
21 required by that section, interest shall be paid to the state on
22 the amount required to be paid in accordance with Section 7-1-
23 13.1 NMSA 1978. If interest is due under this subsection and is
24 also due under Subsection A of this section, interest shall be
25 due and collected only pursuant to Subsection A of this

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1 section. "

2 Section 2. Section 7-1-68 NMSA 1978 (being Laws 1965,
3 Chapter 248, Section 69, as amended) is amended to read:

4 "7-1-68. INTEREST ON OVERPAYMENTS. --

5 A. As provided in this section, interest shall be
6 allowed and paid on the amount of tax overpaid by a person that
7 is subsequently refunded or credited to that person.

8 B. Interest payable on overpayments of tax shall be
9 [paid]:

10 (1) for periods prior to January 1, 1998, at
11 the rate of fifteen percent a year, computed at the rate of one
12 and one-fourth percent per month or fraction thereof; [provided
13 that if a different rate is specified by a compact or other
14 interstate agreement to which New Mexico is a party, then that
15 rate shall be applied to amounts due under the compact or other
16 agreement] and

17 (2) for calendar years beginning on or after
18 January 1, 1998, at a rate equal to the underpayment rate
19 determined by the internal revenue service in accordance with
20 Section 6621 of the Internal Revenue Code for the calendar
21 quarter immediately preceding the calendar year to which the
22 rate is to apply. However, if no underpayment rate is
23 determined for that period, the rate for the calendar year shall
24 be the prime rate published on the first business day of that
25 calendar year plus one hundred basis points, computed at one-

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1 twelfth of that rate per month. If a monthly period for which
2 interest is being calculated lies in two calendar years, the
3 interest rate applicable to the earlier calendar year shall
4 apply to the whole monthly period. As used in this paragraph,
5 "prime rate" means the nationally published prime rate
6 representing the base rate on corporate loans posted by at least
7 seventy-five percent of the nation's thirty largest banks.

8 C. Notwithstanding the provisions in Subsection B of
9 this section, if a different rate of interest is specified by a
10 compact or other interstate agreement to which New Mexico is a
11 party, that rate shall be applied to amounts due under the
12 compact or other agreement.

13 ~~[C.]~~ D. Unless otherwise provided by this section,
14 interest on an overpayment not arising from an assessment by the
15 department shall be paid from the date the claim for refund was
16 made until a date preceding by not more than thirty days the
17 date on which the amount thereof is credited or refunded to any
18 person; interest on an overpayment arising from an assessment by
19 the department shall be paid from the date overpayment was made
20 until a date preceding by not more than thirty days the date on
21 which the amount thereof is credited or refunded to any person.

22 ~~[D.]~~ E. No interest shall be allowed or paid with
23 respect to an amount credited or refunded if:

24 (1) the amount of interest due is less than one
25 dollar (\$1.00);

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1 (2) the credit or refund is made within
2 seventy-five days of the date of the claim for refund of income
3 tax, pursuant to either the Income Tax Act or the Corporate
4 Income and Franchise Tax Act, for the tax year immediately
5 preceding the tax year in which the claim is made;

6 (3) the credit or refund is made within one
7 hundred twenty days of the date of the claim for refund of
8 income tax, pursuant to the Income Tax Act or the Corporate
9 Income and Franchise Tax Act [~~or the Banking and Financial
10 Corporations Tax Act~~], for any tax year more than one year prior
11 to the year in which the claim is made;

12 (4) Sections 6611(f) and 6611(g) of the [~~United~~
13 ~~States~~] Internal Revenue Code [~~of 1986~~], as those sections may
14 be amended or renumbered, prohibit payment of interest for
15 federal income tax purposes;

16 (5) the credit or refund is made within sixty
17 days of the date of the claim for refund of any tax other than
18 income tax; or

19 (6) gasoline tax is refunded or credited under
20 the Gasoline Tax Act to users of gasoline off the highways. "

21 Section 3. EFFECTIVE DATE. -- The effective date of the
22 provisions of this act is July 1, 1997.

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